UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

BILL J. CORY, Plaintiff-Appellant, v. DORIS FAHLSTROM; THOMAS M. TUGGLE, Judge; GUY R. STEIER; PATRIK W. NEUSTROM; SAMANTHA P. ANGELL; and DANA BREWER, Defendants-Appellees.	FILED United States Court of Appeals Tenth Circuit Nov 12, 2003 No. 03-3079 (D.C. No. 02-CV-1313-JTM) (D.Kan.)

ORDER AND JUDGMENT*

Before **TACHA**, Chief Circuit Judge, **MCKAY** and **McCONNELL**, Circuit Judges.

After examining the briefs and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal.

See Fed. R. App.P. 34(a)(2); 10th cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. [1]

The present civil rights appeal involves two Kansas State court cases – a probate case and a related civil case filed against Appellant to recover assets of the estate. Appellant alleges that Appellees conspired to deny him due process and denied him due process in connection with these two cases. In two separate orders, the district court granted summary judgment for all Appellees, ruling that Appellant's attempt to obtain review of the judgments entered in the state court cases were barred by the *Rooker-Feldman* Doctrine.

We agree with the district court that Appellant's civil rights claims are barred by the *Rooker-Feldman* Doctrine. Pursuant to the *Rooker-Feldman* Doctrine, "[a] federal district court does not have the authority to review final judgments of a state court in judicial proceedings; such review may be had only in the United States Supreme Court." *Van Sickle v. Holloway*, 791 F.2d 1431, 1436 (10th Cir. 1986); see *also District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.,* 263 U.S. 413 (1923). The *Rooker-Feldman* Doctrine also bars cases that are "inextricably intertwined: with prior state court decisions. *Feldman*, 460 U.S. at 486-87; *Van Sickle*, 791 F. 2d at 1436. This is true even when "those challenges allege that the state court's action was unconstitutional." *Van Sickle*, 791 F.2d at 1436 (quoting Feldman, 460 U.S. at 486).

Appellant's claims all arise from the prior Kansas State court proceedings or are inextricably intertwined with those proceedings. Therefore, after a thorough review of the

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[1] This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of the 10th Cir. R. 36.3.

briefs and the record, and for substantially the same reasons set forth in the district court's well-reasoned orders, we hold that no relief is available to Appellant.

AFFIRMED.

Entered for the Court

Monroe G. McKay
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

BILL J. CORY, Plaintiff, vs. DORIS FAHLSTROM, THOMAS M. TUGGLE, JUDGE, GUY R. STEIER, PATRIK W. NEUSTROM, SAMANTHA P. ANGELL, And DANA BREWER, Defendants.	No. 02-1313-JTM

MEMORANDUM AND ORDER

This matter is before the court on the motion for summary judgment of defendant Doris Fahlstrom. The court has previously granted summary judgment in favor of the defendants in the action, pursuant to the *Rooker-Feldman* doctrine. The court incorporates the findings and rulings from that decision herein, and finds that the doctrine also supports granting summary judgment in favor of defendant Fahlstrom.

Summary judgment is proper where the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.

Fed.R.Civ.P. 56(c). In considering a motion for summary judgment, the court must examine all evidence in a light most favorable to the opposing party. *McKenzie v. Mercy Hospital*, 854 F.2d 365, 367 (10th Cir. 1988). The party moving for summary judgment must demonstrate its entitlement to summary judgment beyond a reasonable doubt. *Ellis v. El Paso Natural Gas Co.*, 754 F.2d 884, 885 (10th Cir. 1985). The moving party need not disprove plaintiff's claim; it need only establish that the factual allegations have no legal significance. *Dayton Hudson Corp. v. Macerich Real Estate Co.*, 812 F.2d 1319, 1323 (10th Cir. 1987).

In resisting a motion for summary judgment, the opposing party may not rely upon more allegations or denials contained in its pleadings or briefs. Rather, the nonmoving party must come forward with specific facts showing the presence of a genuine issue of material fact for trial and significant probative evidence supporting the allegation. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,256(1986). Once the moving party has carried its burden under Rule 56 (c), the party opposing summary judgement must do more than simply show there is some metaphysical doubt as to the material facts. "In the language of the Rule, the nonmoving party must come forward with 'specific facts showing that there is a **genuine issue for trial.**'" *Matsushita Elec. Indus. Co., Ltd. V. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e)) (emphasis in Matsushita). One of the principal purposes of the summary judgement rule is to isolate and dispose of factually unsupported claims or defenses, and the rule should be interpreted in a way that allows it to accomplish this purpose. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

Plaintiff Cory has filed a response to Fahlstrom's motion, but he does not submit any sworn fact statement

which would controvert the evidence submitted either by Fahlstrom, or previously by the other defendants in their respective motions, That evidence establishes that, on February 2, 1999, Doris Fahlstrom filed a petition in th District Court of Cloud County, Kansas requesting the admission for probate of the Last Will and Testament of Madeline Young. The will was admitted to probate on November 8, 1998 and Fahlstrom was named executrix. On January 19, 2000, Fahlstrom, on behalf of the Estate of Madeline Young, filed a lawsuit in Cloud County, Kansas District Court to recover assets of the estate from plaintiff Cory. On July 28, 2000, she filed a motion for default judgment. The court granted the motion and entered judgement against Cory and co-defendant Arden Krohn for $780,273.00, plus interest.

Cory and Krohn filed an appeal from the judgment on September 25, 2000. On November 8, 2000, both Cory and Krohn accepted and signed a settlement agreement under which the previous judgment amount was reduced to $400,000.00 in exchange for which Cory and Krohn would dismiss their appeal, and Cory agreed to release Fahlstrom from any claims against her. The district court conducted a hearing on November 17, 2000, and approved the settlement.

Cory's argument against the application of the Rooker-Feldman doctrine is that he was not personally served with process in the state action, and thus was never a party. While this is a correct general statement of the law, *see Johnson v. De Grandy*, 512 U.S. 997, 1006 (1994); *Valenti v. Mitchell*, 962 F. 2d 288, 298 (3d Cir. 1992) it has no application here under the facts of this case.

The evidence establishes that, however much plaintiff may repeat his argument that he was not a "party" to the state court action, he unquestionably became an active litigant there, and the *Rooker-Feldman* doctrine is therefore applicable. As noted earlier, it is uncontroverted that Cory

participated in the state action; his own Complaint explicitly acknowledges (1) that the state court twice found that it had jurisdiction and that service of process had been properly achieved (Complaint, at ¶ 12, 15); (2) that the state court entered judgment against Cory *(Id.,* at ¶ 15), (3) that Cory filed at least two motions (seeking recusal of the judge, whom Cory alleges has been in conspiracy with the state court plaintiff) in the state action (*Id.,* at ¶ 18, 19), (4) that Cory filed a Notice of Appeal of the state district court decision with the Kansas Court of Appeals, along with a Motion to Determine Bond and a Motion for Relief from Default Judgment (*Id.,* at ¶ 21), (5) that Cory filed a Petition for Mandamus with the Kansas Supreme Court (Id.); that the state district court ordered Cory to show cause why he should not be held in contempt (*Id.,* at ¶ 22); and (6) that a settlement was approved by the court (*Id.,* at ¶ 23). The order incorporating the settlement agreement has been submitted to this court, an order signed by Cory as "Defendant," in addition to the signatures of co-defendant Arden Krohn and by the defendants' attorney. (Dkt. No. 27, Exh. A.) After this order, the defendant's counsel also submitted a Stipulated Voluntary Dismissal with the Kansas Court of Appeals in Case No. 00-85983-A (*Id.,* Exh, C) which sets forth the general settlement.

Cory repeatedly and actively participated in the state court proceedings he now challenges, and there is no reason he could not have advanced his current arguments therein. As the principles underlying the Rooker-Feldman doctrine are certainly applicable here, the doctrine itself should also here be given force and effect.

The court notes that this motion was submitted under an expedited briefing schedule with the consent of all parties, and allowed plaintiff Cory to incorporate all arguments he had previously raised in opposition to the other defendants' respective motions for summary judgment, and allowed defendant Fahlstrom to incorporate

all arguments made by the other defendants in their respective summary judgment motions, Both plaintiff and defendant Fahlstrom were allowed to submit additional factual assertions germane to the motion decided today.

IT IS ACCORDINGLY ORDERED this 3d day of April, 2003, that defendant Fahlstrom's Motion for Summary Judgment (Dkt. No. 68) is hereby granted.

s/J. Thomas Marten
J. THOMAS MARTEN, JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

BILL J. CORY, Plaintiff, vs. DORIS FAHLSTROM, THOMAS M. TUGGLE, JUDGE, GUY R. STEIER, PATRIK W. NEUSTROM, SAMANTHA P. ANGELL, And DANA BREWER, Defendants.	Filed U.S. District Court District of Kansas Feb 11, 2003 No. 02-1313-JTM

MEMORANDUM AND ORDER

The present action arises from a will contested in Kansas state court. Defendant Doris Fahlstrom, as executrix of the Estate of Madaline Young, brought the litigation, Case Nos. 99-PR-09 and 00-C-02, in Cloud County, Kansas. Defendant Judge Thomas Tuggle, Chief Judge of the Kansas Twelfth Judicial District, presided over the action. Defendants Dana Brewer, Guy Steier, Patrik Neustrom, and Samantha Angell represented Fahlstrom during the course of the proceeding. Plaintiff Bill Cory was a party to the litigation. Cory moved to dismiss the action on the grounds that he was not properly served The motion was dismissed by the court, and ultimately a default judgment was entered against Cory and anther defendant in the action. The

defendants filed a notice of appeal, but this was dismissed when the parties settled the proceeding, the settlement being formally approved before the court on November 17, 2000.

In the present action, Cory has advanced various constitutional claims against Fahlstrom, the attorneys, and Judge Tuggle. Motions for summary judgment are before the court on behalf of both plaintiff and defendants. In addition, Cory has moved for default judgment against Fahlstrom. For the reasons stated herein, the court will grant the defendants' motions for summary judgment.

Summary judgment is proper where the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56 (c). In considering a motion for summary judgment, the court must examine all evidence in a light most favorable to the opposing party. *McKenzie v. Mercy Hospital,* 854 F. 2d 365, 367 (10th Cir. 1988). The party moving for summary judgment must demonstrate its entitlement to summary judgment beyond a reasonable doubt. *Ellis v. El Paso Natural Gas Co.,* 754 F. 2d 884, 885 (10th Cir. 1985). The moving party need not disprove plaintiff's claim; it need only establish that the factual allegations have no legal significance. *Dayton Judson Corp. v. Macerich Real Estate Co.,* 812 F.2d 1319, 1323 (10th Cir. 1987).

In resisting a motion for summary judgment, the opposing party may not rely upon mere allegations or denials contained in its pleadings or briefs. Rather, the nonmoving party must come forward with specific facts showing the presence of a genuine issue of material fact for trial and significant probative evidence supporting the allegation. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). Once the moving party has arrived its burden under Rule 56 (c), the party opposing summary judgment

must do more than simply show there is some metaphysical doubt as to the material facts. "In the language of the Rule, the nonmoving party must come forward with 'specific facts showing that there is a **genuine issue for trial**.'" *Matsushita Elec. Indus. Co., Ltd. V. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e))(emphasis in *Matsushita*). One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses, and the rule should be interpreted in a way that allows it to accomplish this purpose. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

Cory's responsive pleadings make no attempt to comply with D. Kan Rule 56.1 in form or substance; his pleadings do not set forth by numbered paragraphs those facts which are claimed to be specifically controverted or uncontroverted, nor are the assertions of fact based upon citations to the evidentiary record. His response to the initial summary judgement motion (Dkt. No. 39) contains no sworn factual statements. His pleadings are virtually all legal argument; what might be viewed as factual assertions in his pleadings are indiscriminately scattered throughout that lengthy argument. In a subsequent pleading (Dkt. No. 57 at 28 ¶ 42), Cory states that while he had "missed Local Rule 56," this was of no effect since he had submitted a "verified" pleading to the court.

A review of the court file fails to establish that Cory has advanced any averments of fact under oath. Moreover, many if not most of the various factual claims which have been advanced by Cory, such as those relating to various conspiratorial acts, appear to be matters which would not be within his own personal knowledge, a requirement of Rule 56. In any event, it is clear that, although he has been subsequently presented with the requirements of Rule 56.1 – in particular by the sharp objections by all of the defendants to his failure to comply with the rule – Cory has nonetheless done nothing to correct the deficiencies in any of his

pleadings by submitting a separate factual statement, tied by citation to admissible evidence. Nor has he attempted to meet the requirements of Rule 56.1 by specifically admitting or denying the factual statements of the defendants.

Accordingly, the facts submitted by defendants in Dkt. Nos. 27, 49, 54, and 56 are deemed admitted pursuant to D.Kan. Rule 56.1 and incorporated herein.

Turning to the various arguments advanced by the defendants, it is apparent that summary judgement is appropriate. Although the defendants advance various rationales for the dismissal of Cory's claims, one common thread to all of the defendants' motions is their contention that the court should not entertain the action pursuant to the *Rooker-Feldman* Doctine. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.* 263 U.S. 413 (1923).

> Under 28 U.S.C. § 1257, 'federal review of state court judgments can be obtained only in the United States Supreme Court." *Kiowa Indian Tribe of Okla.* V. Hoover, 150 F. 3d 1163, 1169 (10th Cir. 1998)(citing *Dist. Of Columbia ct. of App. V. Feldman,* 460 U.S. 462, 476, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983)). As a result, the *Rooker-Feldman* doctrine prohibits a lower federal court from considering cliams actually decided by a state court, *Rooker v. Fid. Trust Co*, 263 U.S. 413, 415-16, 44 S.Ct. 149, 68 L.Ed. 362 (1923), and claims "inextricably intertwined" with a prior state court judgment. *Feldman,* 460 U.s. at 483 n.16, 103 S.Ct. 1303. In other words, *Rooker-Feldman* precludes a "party losing in state court... from seeking what in substance would be appellate review of [a] state judgment in a United States district court, based on the losing party's claim that the state

> judgement itself violates the loser's federal rights." *Johnson v. DeGrandy*, 512 U.S. 997, 1005-06, 114 S.Ct. 2647, 129 L.Ed.2d 775 (1994).

This court has previously applied the doctrine in an action similar in key respects to the present action. See Hall v. Martin, No. 99-1092-JTM, 2001 WL 946179 (D. Kan. July 18, 2001)(finding Rooker-Feldman Doctrine barred an action by a dissatisfied probate claimant "following prior, unsuccessful state court litigation: against the beneficiaries of the estate, their attorneys, and her own attorneys).

Further, in his responsive pleadings, Cory simply restates his various theories of conspiracy, fraud, corruption and coercion. He stresses the history of his family (the plaintiff's "great-grandfather was the first taxpayer in Republic County, assisting in organizing the county and the Salt Creek Militia, in which he served, to fight the Indians"), coupled with the story of how he successfully fought a speeding ticket in Missouri (Dkt. No. 57, at 3-4,10). He stresses his own "good character and high morals." (id. At 10). He asks for modification of the Kansas attachment statute (Dkt. No. 57, at 7, 25). He asks that the Kansas Attorney General remove Judge Tuggle from office. (Id. At 26). What plaintiff utterly fails to do in any of his pleadings is to offer any response as to why Rooker-Feldman is not applicable here.

Accordingly, the court will grant the defendants' motion for summary judgment. The court will deny plaintiff's motion for summary judgment in light of the present holding. Plaintiff's motion for default judgment, which cites Fahlstrom's failure to respond to his summary judgment motion and which also cites Fed. R. Civ. Pr. 55(b) and 54 (C0 is denied. First, as noted earlier, Cory's motion for summary judgment fails in every important respect to meet the standards set forth by D.Kan Rule 56.1; it is denied

on those grounds. Second, Fahlstrom has recently filed answer in the case (Dkt. No. 30), and there is no basis for concluding that Fahlstrom "has failed to plead or otherwise defend" the action within the meaning of either Rule 55 or Rule 54.

IT IS ACCORDINGLY ORDERED this 11th day of February, 2003, that the defendants' summary judgment motions (Dkt. Nos. 26, 48, 53, 55) ARE GRANTED; PLAINTIFF'S motions for summary judgment and default (Dkt. Nos. 39, 57) are denied.

s/J. Thomas Marten
J. THOMAS MARTEN, Judge